

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>CAFFA ENTERPRISES PHASE III, LLLP,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 65790</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 21, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2012.

Parties stipulated to the admittance of Exhibits 1 and A and to the expertise of witnesses Todd J. Stevens, Stevens & Associates, Inc., and Gary Mycock, Certified General Appraiser with the Arapahoe County Assessor’s Office.

Subject property is described as follows:

**2045-2075 West Amherst Avenue, Englewood, Colorado  
Arapahoe County Parcel No. 1971-33-2-04-13**

The subject property consists of a multi-tenant warehouse with 14,400-rentable square feet situated on a 21,736-square-foot site. The building was completed in 1974, and offers ceiling height of 12 to 24 feet and a 220-volt power supply. Three leases were consummated within the subject during the base period.

Petitioner presented the following indicators of value:

Market: \$518,400  
Cost: Not applied

Income: \$419,900

Based on the market approach, Petitioner presented an indicated value of \$518,400 for the subject property. Petitioner's witness, Mr. Mark J. Stevens, presented three comparable sales ranging in sale price from \$700,000 to \$1,280,000 and in size from 18,400 to 29,840 square feet. This equates to an unadjusted range of \$37.66 to \$42.90 per square foot. Mr. Stevens indicated that the primary emphasis placed on selection of sales was location. The sales were adjusted for differences in age, physical characteristics, excess land, and building size. After adjustments were made, the sales ranged from \$31.50 to \$37.78 per square foot. Mr. Stevens applied a value of \$36.00 per square foot to the subject, indicating a value of \$518,400 using the market approach.

Petitioner presented an income approach to derive a value of \$419,900 for the subject property. Mr. Stevens presented eight leases for analysis of market rent, including three from the subject. The three subject leases indicated rates ranging from \$5.00 to \$6.75 per square foot, with expenses paid by the landlord. Copies of the leases were presented in Petitioner's Exhibit 2. After deducting expenses of \$1.86 per square foot, Mr. Stevens concluded to a rental rate of \$3.25 per square foot, net of expenses. Vacancy of 5% and operating, maintenance and reserves of 15% were deducted to produce net income of \$37,791. A 9% capitalization rate calculates to a value of \$419,900 for the subject using the income approach.

Petitioner is requesting a 2012 actual value of \$425,000 for the subject property, with the income approach given the greatest consideration.

Respondent presented the following indicators of value:

Market:	\$913,500
Cost:	Not applied
Income:	\$815,000

Respondent's witness, Mr. Gary Mycock, presented a market approach consisting of four comparable sales ranging in sale price from \$600,000 to \$730,000 and in size from 9,000 to 11,532 square feet, indicating an unadjusted range of \$62.87 to \$74.61 per square foot. Based on a qualitative analysis, Mr. Mycock ranked the subject as being most similar to Sales 3 and 4 to narrow the range to \$62.87 to \$66.67 per square foot, concluding to a value at the lower end of that range, at \$63.00 per square foot. Based on a size of 14,500 square feet for the subject, Mr. Mycock presented a value of \$913,500 using the market approach.

Respondent used the income approach to derive a value of \$815,000 for the subject property. Mr. Mycock applied a rental rate of \$5.75 per square foot net of expenses based on asking rental rates for nine industrial properties located in the lower south central industrial submarket as categorized by CoStar. Consideration was also given to the annual rental income generated within the subject. Vacancy of 8% and owner's expenses of 15% were deducted to indicate net operating income of \$65,199. Applying a capitalization rate of 8.0%, the income approach indicated a value of \$815,000.

Respondent assigned an actual value of \$797,500 to the subject property for tax year 2012.

As required by Section 39-1-103(5)(a), C.R.S. both parties considered the cost, market and income approaches to value, but determined that the cost approach was not applicable to the valuation of the subject. The Board concurs.

Both parties gave consideration to the market approach, with a total of seven sales presented to the Board. Based on testimony and exhibits, the Board was convinced that Petitioner's sales were of similarly located manufacturing facilities representing the lower end of the range in value for the subject. Respondent's sales were found to be superior for location and/or tenant use as marijuana grow facilities setting the upper end of the range in value. In this case, the market approach only serves as a broad test of reasonableness for the concluded value.

The subject is a leased, multi-tenant industrial property; therefore, the greatest reliance should be placed on the income approach. The most significant difference between the parties' analyses was in the rental rate utilized in the income approach. Both parties gave some consideration to leases that were signed within the subject during the base period; however, Petitioner adjusted the rates downward for expenses while Respondent assumed that the rates shown were based on net lease terms. After a review of the leases consummated during the base period within the subject, the Board was convinced that Petitioner's interpretation was better supported and that Respondent's assertion that the actual leases were written net of expenses was not reflected in the actual lease documents. However, Petitioner's net rate of \$3.25 is not supported by the data or analysis provided. After deducting \$1.86 per square foot for expenses from the rates shown, the net rental rates for base period leases in the subject ranged between \$3.14 and \$4.89, with an average of \$4.17 per square foot. The Board concludes that a net rental rate of \$4.20 per square foot is supported by market data for the subject as well as other similarly located properties.

The second area of difference lies in the vacancy rate used in the analysis, with Petitioner deducting 5% and Respondent deducting 8%. Surveys cited by both parties suggest a wide range in vacancy rates, from approximately 6% to 9%. The subject was reported as fully occupied during the base period as well as on the effective date of the appraisal. A vacancy rate at the lower end of the range is reasonable for this property type in this location. The Board was convinced that a deduction of 5% was reasonable.

A third area of difference is in the deduction for owner's expenses applied to the income approach. Petitioner makes a deduction of 15% for operating, maintenance and reserve expenses. Respondent outlines this deduction for owner expenses within Exhibit A, page 23 as 3% to 5% for management/administrative expense plus 2% to 3% for reserves for replacement, concluding to a deduction of 6% within the body of the report. The actual deduction taken on page 25 is 15%, equal to that of Petitioner. Based on a net lease rate of \$4.20 per square foot, the Board was convinced that most expenses should be covered by the tenant, making a 15% deduction excessive. Respondent's concluded deduction of 6% is more reasonable, and better supported as part of Respondent's analysis.

The other area of difference between parties was in the selection of the capitalization rate, with Petitioner applying a 9.0% rate and Respondent applying a lower 8.0% rate. Respondent included an analysis of sales that indicated a mean rate of 7.52% and Petitioner testified that a rate of

8.0% was supported. The Board finds that the lower 8.0% is better supported by an analysis of both sales and a variety of surveys.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect. Based on the Board's analysis outlined above and applied to Petitioner's 14,400 net rentable square footage, the value indicated by the income approach is recalculated as \$675,000, rounded.

The Board concludes that the 2012 actual value of the subject property should be reduced to \$675,000.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2012 actual value for the subject property of \$675,000.

The Arapahoe County Assessor is directed to change his/her records accordingly.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 19th day of February, 2016.

BOARD OF ASSESSMENT APPEALS

*Diane M DeVries*

Diane M. DeVries

*Sondra W Mercier*

Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*Milla Lishchuk*

Milla Lishchuk

